

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA,
WHEELING DIVISION**

PROGRESSIVE MINERALS LLC.,	§	
	§	
Plaintiff,	§	CASE NO. 5:07-CV-108
	§	
V.	§	
	§	
MUHAMMAD HAROON RASHID, GERALD D. HENDRIX, DAVID M. BERNSTEIN, and JUDE O’NURKERA,	§	
	§	
Defendants.	§	

CLOSING ARGUMENT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

COMES NOW Progressive Minerals and files this its Closing Argument in connection with the trial of the above-captioned matter.

ARGUMENT

This case has been a frustrating process for Progressive, and most assuredly the Court, due to the refusal of the Defendants to participate and, in particular, the refusal of Defendant David Bernstein to provide court ordered discovery and to otherwise comply with Court orders. Nonetheless, Progressive is grateful to have had its day in Court and thanks the Court for hearing this case.

Liability is not an issue. All of the Defendants have previously been defaulted. Rather, this trial is about damages. Actual damages are clear. Progressive was fraudulently induced by the Defendants to pay \$750,000.00 to Global Empire pursuant to the Defendant's false representations regarding the nature of Global Empire, its management team, the individuals purportedly involved with Global Empire and, in fact, Global Empire's entire course of dealing up until the time that it had received the last of

Progressive's money. In addition, Progressive is entitled to recover \$500,000.00, which was the amount of money paid by Progressive to the James C. Justice Companies to secure the purchase, which money Progressive's President, the Honorable Arch A. Moore, Jr., testified would not have been paid but for Global Empire's various representations.

Progressive, through the evidence presented, including proof of payment and the testimony of Governor Moore has proven actual damages in the amount of \$1,250,000.00. This brings us to the critical issue, that being whether the Court believes that the conduct of the Defendants has been so egregious as to warrant the imposition of punitive damages, and if so in what amount. Progressive respectfully suggests that punitive damages are in fact warranted in this case.

Record citations to the evidence are contained in the proposed findings of fact which are being submitted simultaneously with this closing argument, and will not be repeated here verbatim with citation. Those proposed findings, however, are in the interest of brevity incorporated by reference herein.

Summarily, however, the evidence demonstrates that the Defendants to this action perpetrated a scam on Progressive from the very beginning and that the Defendants, in particular Defendants Bernstein, Muhammad Haroon Rashid and Gerald Hendrix, acted in concert to carry out the fraudulent scheme. Defendant Bernstein recommended Global Empire to Defendant Jude O'Nurkera, which led Global Empire to Progressive. Knowing of Governor Moore's involvement, the Defendants produced the PowerPoint and resumes, which in light of the affidavits on file were apparently altered so as to make it appear that prominent Canadian politicians were involved with Global Empire and in fact

sat on its Board of Directors, a relationship which has now been disavowed under oath by Defendant Rashid and Defendant Bernstein. Further evidence of the fictitious nature of the resumes provided to Progressive is the resume of Gerald Hendrix which claims that Mr. Hendrix oversaw 75 Global Empire employees when in fact the evidence is that Global Empire had only 1 employee, Rashid. Rashid's resume likewise appears to be little more than a complete fabrication in light of the evidence presented.

Similarly, Global Empire was a complete fabrication, as evidenced by the testimony from the 341 creditor's meeting in Global Empire's subsequent bankruptcy case, and other documents from Global Empire's bankruptcy filing. Further, the evidence demonstrates that these actions were not accidental or innocent. Fred Cooper testified as to the Hoover's report, a report which contained information purporting to substantiate Global Empire, which information could only have come from the Defendants in an effort to provide credibility that Global Empire did not have. Further, the PowerPoint and the resumes were clearly tailored to Progressive. The inclusion of John Reynolds and John Crosbie, with whom David Bernstein has some association, could only have been aimed at trying to convince Governor Moore that Global Empire was a real entity. That David Bernstein, John Reynolds and John Crosbie were all represented by the same counsel at the outset of this case is further evidence of their association and the evidence demonstrates that at every opportunity David Bernstein invoked John Reynolds' and John Crosbie's names to Governor Moore, going so far at the Houston meeting in October as to indicate that the two Canadian politicians had sent their regards to Governor Moore. From this, it is fair to infer that David Bernstein had as much to do with the scam as did Defendants Hendrix and Rashid. Hendrix did his part, serving as the primary contact

with Global Empire with Fred Cooper and doing due diligence leading up to the final \$500,000.00 payment. Rashid is Global Empire's sole member and sole employee. He entered into the various agreements with Progressive, including the Corporate Guaranty which offered to refund Progressive's deposit in the event that the deal was not done. The Defendants had to have known that contrary to the representations made, Global Empire had neither the ability to ever fund the loan nor the intent to refund the deposit. Defendants Rashid, Hendrix and Bernstein were present at the October meeting in Houston, which occurred shortly before Global Empire's bankruptcy filing, at which time Progressive was further stonewalled with empty promises and requests for due diligence information which had been provided months earlier. The conspiracy to defraud could not be more clear.

Most telling though is what occurred after the Defendants received the last of Progressive's money. Simply put, they disappeared, much as Defendant Bernstein did in this action. Having received the \$750,000.00, the Defendants became difficult to reach, and would not return phone calls. They distributed the deposits amongst themselves. From the evidence we know that Jude O'Nurkera received \$200,000.00 and that virtually nothing was left when Global Empire filed for bankruptcy on December 5, 2005. When the deadline to fund the loan passed and Rashid was pressed for a response, he continued to stall. Rashid invited Governor Moore to Houston to close the transaction, only to deliver a purported due diligence list including items which they had previously been provided, and they continued to delay then and thereafter with false promises of either funding the transaction or refunding Progressive's money. The conduct afterward simply

confirms the compelling story amply demonstrated by the facts of this case, that there was an intent to defraud from the very beginning.

There is also the issue of the conduct of the Defendants during this case. Defendant Bernstein ignored Court orders to produce documents, answer interrogatories, and orders compelling his appearance at depositions, mediation and the pre-trial conference. He did only what he had to do in order to further delay Progressive. That is, file an Answer, and answer requests for admissions. In essence, the same *modus operandi* as the Defendants pursued following their receipt of Progressive's money. Defendants Hendrix and Rashid never bothered to respond to the lawsuit. The Defendants' failure to put forth a defense is revealing. The allegations in this case were severe. In the internet age, these allegations could prove extremely damaging if not refuted. It is a reasonable inference that if there was a legitimate excuse or a story that could be put forth in defense of the allegations, the Defendants would have appeared, and presented that story. Their silence in the face of the allegations warrants an inference, if any were needed, that the allegations are in fact true.

Progressive was scammed. This was a con job from the very outset. From the complete fabrication of Global Empire through the various false representations and empty promises, all intended to extract \$750,000.00 from Progressive. Progressive respectfully submits this conduct should be punished and warrants the imposition of punitive damages to deter such conduct from others in the future. Assuming the Court agrees, Progressive would request the Court apply a multiplier of seven times the actual damages.

Respectfully submitted:

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